

REMARKS

The present application has been reviewed in light of the Office Action mailed on August 13, 2010. Claims 1-30 are currently pending. Claims 1, 8, 19 and 28 have been amended herein. It is respectfully submitted that the claims now pending in the application are fully supported by the Specification, introduce no new matter, and are allowable over the cited references of record. Allowance of the application, as amended herein, is respectfully requested.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 1-30 were rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent Publication No. 2002/0058933 to Christopherson et al. ("Christopherson"). Applicants respectfully submit that Christopherson does not anticipate Applicants' claims for at least the following reasons.

As amended herein, claim 1 recites a temperature monitoring circuit for use with a power source including, *inter alia*, a control circuit for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold, "wherein the control circuit is configured to control the overall function of the power source." Support for this amendment can at least be found on page 13, lines 2-8 and page 15, line 21 to page 16, line 1.

Conversely, Christopherson discloses that a surgical instrument 26 may include one or more thermocouples 74, 80 that communicate with a temperature measurement circuit 76 (interpreted by the Examiner as being analogous to first and second temperature circuits of Applicants' claims) of VETAD 10 over a line 78. According to Christopherson, thermocouples 74 and 80 are provided for providing temperature measurements at selected tissue locations to indicate the progress of the

ablation therapy. Circuit 76 may be in the form of a single circuit or could comprise two identical circuits such that an apparatus 10 may provide a redundant safety feature. As disclosed in Christopherson, with a double circuit the thermocouples 74 and 80 would be divided into two groups of thermocouples with one group providing temperature indicating signals to one circuit and the other group providing temperature indicating signals to the other circuit. Christopherson discloses that if one circuit of the dual circuit fails, the other will remain operational and the therapy will continue. While Christopherson does disclose that shutdown of the therapy and the apparatus 10 would occur with failure of both of the dual circuits of the temperature measurement circuit 76, Christopherson does not disclose that circuit 76 controls overall functions of a generator 18 (e.g., power source) associated with the surgical instrument 26.

Accordingly, in view of the foregoing remarks/arguments, Applicants respectfully submit that the rejection of claim 1 under 35 U.S.C. §102(b) as being anticipated by Christopherson is overcome and should be withdrawn.

Moreover, since claims 2-7 depend from claim 1 and contain all the limitations of claim 1, for at least the reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claims 2-7 are also patentable.

As amended herein, claim 8 recites an electrosurgical generator including, *inter alia*, a control circuit for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold, “wherein the control circuit is configured to control the overall function of the power source.” Thus, for at least the same or similar reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claim 8 is allowable over Christopherson. Moreover, since claims 9-18 depend from claim 8, and

contain all the limitations of claim 8, for at least the reasons presented above regarding the patentability of claim 8, Applicants respectfully submit that claims 9-18 are also patentable.

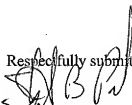
As amended herein, claim 19 recites an electrosurgical system including, *inter alia*, a control circuit for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold, “wherein the control circuit is configured to control the overall function of the power source.” Thus, for at least the same or similar reasons presented above regarding the patentability of claims 1 and 8, Applicants respectfully submit that claim 19 is allowable over Christopherson. Moreover, since claims 20-27 depend from claim 19, and contain all the limitations of claim 19, for at least the reasons presented above regarding the patentability of claim 19, Applicants respectfully submit that claims 20-27 are also patentable.

As amended herein, claim 28 recites a method for controlling an electrosurgical system, the method including, *inter alia*, determining a difference of first and second temperature values via “a control system operably associated with the electrosurgical system, wherein the control circuit is configured to control the overall function of the electrosurgical generator.” Thus, for at least the same or similar reasons presented above regarding the patentability of claims 1, 8 and 19, Applicants respectfully submit that claim 28 is allowable over Christopherson. Moreover, since claims 29-30 depend from claim 28, and contain all the limitations of claim 28, for at least the reasons presented above regarding the patentability of claim 28, Applicants respectfully submit that claims 29-30 are also patentable.

Conclusion

In view of the foregoing amendments, arguments and/or remarks, it is respectfully submitted that all claims pending in the application are in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicants' undersigned Attorney at their convenience.

Respectfully submitted,


Stephen Perkins
Reg. No. 45,009
Attorney for Applicants

Send correspondence to:
Energy-Based Devices
Attn: IP Legal
5920 Longbow Drive
Mail Stop A36
Boulder, CO 80301